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LEGAL TITLE TO OSS RECORDS

1. Legal title to OSS records rests today evidently with three different agencies, not one: (1) the State Department, with respect to the records of two branches of OSS (Research and Analysis, and Presentation), together with the records of field units of those two branches (quantity unknown), but excluding, notably, certain personnel files of the R&A Branch, which were transferred to CIA by State about 1951; (2) CIA, with respect to the records of "all other" branches and activities of OSS, both overt and covert, both headquarters and field, totalling more than 6,000 linear feet, now in DDP/RI/Archives Section, Mrs. Johnson in charge; and (3) the National Archives, which, as the ultimate repository of all Government records of "historical and other value", has inherited over the last several years, from State, War Department (SSU), CIG, and CIA, various parts of the records of OSS, totalling today more than 1,300 linear feet, with more expected sometime in the future.
2. State Department's "legal title" to the OSS records, mentioned above, stems directly from the President's Executive Order of 20 September 1945, which specified that the records of the above two OSS Branches be transferred to State. In addition, State was also expected to inherit, by that Executive Order, certain unnamed records of "other" units of OSS which "related" to those two branches; but apparently no such records were ever actually transferred, according to the present memory of the then OSS archivist, Mrs. Johnson, now in charge of the DDP/RI/Archives Section. (She has detailed shipment lists which might, conceivably, reveal further and more conclusive information on this point.) State did, however, inherit not only the headquarter's records of R&A and of Presentation, but the field records as well, although the latter were not specifically mentioned, as being included, in the Executive Order of

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20 September 1945. Finally, State returned to CIA, about 1951, a considerable body of R&A personnel files, according to Mrs. Johnson, and thus State, in effect, subsequently "divested" itself of legal title to those particular records, in favor of CIA.

3. CIA's legal title to the records of "all other" OSS units, mentioned in the first paragraph above is based, indirectly at least, on the Executive Order of 20 September 1945. In 1947, CIA inherited the OSS records from CIG, presumably (and obviously) under the National Security Act of 1947, which, while it did not specifically mention "OSS records", did say that the "property" and "records" belonging to CIG were now vested in CIA. CIG, in turn, had inherited legal title to OSS records in a series of administrative arrangements with the Strategic Services Unit of the War Department, in 1946; these arrangements are conveniently outlined in memo by Mr. Houston, General Counsel, 30 January 1952, in Historical Staff files. During this period, physical possession of this major body of OSS records remained in SSU, specifically in the SSU Archives Section, with SSU serving as the "executor" and liquidating agent for OSS. (SSU had been set up about 27 September 1945, almost simultaneously with the Executive Order of 20 September 1945.)

It was the SSU Archives Section itself which, for example, made the main separation of the OSS records, after 1 October 1945, between the State Department (see paragraph 2 above) and the War Department.

4. The National Archives' title to those OSS records which it has today in its physical possession stems from various Government-wide statutes, including the Archives Act of 1934 and the Federal Records Act of 1950. (Copies of these acts are not available in Historical Staff files.) Under these laws, implemented by various administrative orders published, for example, in the Federal Register, the Archivist of the United States has executed, over

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the last several years, a number of specific "transfer agreements" and "accession inventories" with State, War Department (SSU), CIG, and CIA, all of them "OSS inheriting agencies" in effect. These administrative agreements, copies of which are in DIA's Records Management Office, contain, for example, this characteristic legal phraseology, quoted to me by telephone by the CIA Records Management Office: "the legal custody of the records (that is, of the records as specified in a given agreement) is hereby officially transferred to the Archivist of the United States....". A list of the 10-some OSS sub-collections transferred to the National Archives is being prepared, for the Historical Staff, by the Chief of the CIA Records Center, Mr [REDACTED] 25X1A

In addition to the above three major "title holders", which represent perhaps more than 90% of the original "corpus" of OSS records, there are some, perhaps many, smaller fragments of the original OSS records which SSU turned "back", after 1 October 1945, to other Government agencies that had been closely associated with OSS; but no attempt has been made by the Historical Staff to tabulate them, let alone attempt to establish the facts of "title" to those fragments. Some, but I doubt whether all of these facts could be "dug out" of the numerous packing lists, shipping manifests, and receipts for OSS records (on file today in DDP/RI/Archives Section), on which these "migrations" out of SSU are noted with longhand notations made by the SSU Archivist, Mrs. Johnson. In addition, some field records of OSS are still today coming back to headquarters, actually to CIA but technically to the SSU as OSS "liquidating agent." (25X1A [REDACTED], who is also Chief of Administration, FI, DDP, is "Mr. SSU" today.) 25X1A [REDACTED] These fragments, we are told by [REDACTED] are normally integrated, routinely, into the main body of OSS records now

in DDP, and the "integrity" of OSS records has been carefully maintained, separately from the records of CIG or of CIA. It is also possible, but the question has not been pursued, that there are still other fragments of OSS records which never came to SSU's attention at all, after 1 October 1945, but which were retained, inadvertently or otherwise, by various other Government agencies associated with OSS; see for example, National Archives handbook, "Federal World War II Records," published in 1951, vol. 2, pp. 15-16, which contains a brief note on certain OSS-related records in "other" agencies. What the "legal title" is, in each such case, would probably have to be based less on legal theory than on the fact that such fragments are in the actual physical possession of one or more other Government agencies, outside of State, CIA, and National Archives.

Closely related to the "legal title" problem are at least two other concepts, which should be mentioned but which have not been conclusively explored in this search: (1) who historically, has controlled the act of "certification" and "authentication", with respect to "true copies" of papers in OSS records? and (2) who controls the levying and handling of "restrictions", "access", "release," and "clearance" for the use of any part of these records? Nothing that I have seen, however, suggests anything except that State and CIA, respectively, are in complete control on these two points for their respective "inheritances". National Archives, obviously, has "accepted" whatever restrictions have been placed on the records by State, CIA, CIG, and War Department (SSU).

*Prepared by [unclear]
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